



Expediting Proceedings at the CPUC: Ideas for Practical Approaches



**Policy & Governance Committee
California Public Utilities Commission**

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Outline

1. Purpose of this discussion, value and tensions
2. Types of proceedings: data and context
3. Expediting tools already in practice
4. Ideas for:
 - a. Enforcement Actions
 - b. Standard Expedited Proceeding Schedule
 - c. Actions Following First 30 Days
 - d. Prehearing Conferences & Discovery
 - e. Evidentiary Hearings
 - f. Case Management



Purpose

The Policy and Governance committee is examining ways to expedite certain CPUC proceedings and identify opportunities to manage proceedings more efficiently across the board.

This deck presents initial ideas about practical approaches as a platform for discussion.



Value and Tensions of Expediting

Value:

- Timeline certainty for the public, parties, other stakeholders including the (strong interest by Legislature)
- Regulatory certainty where licensing, financing, other government approvals await the CPUC's outcome
- Makes enforcement actions more effective
- Administrative efficiency inside the CPUC

But tensions exist:

- Due process
- Multiple parties and multiple issues increase time required
- Where information asymmetry exists, other parties require time for information discovery
- Some fact-specific proceedings require extensive discovery

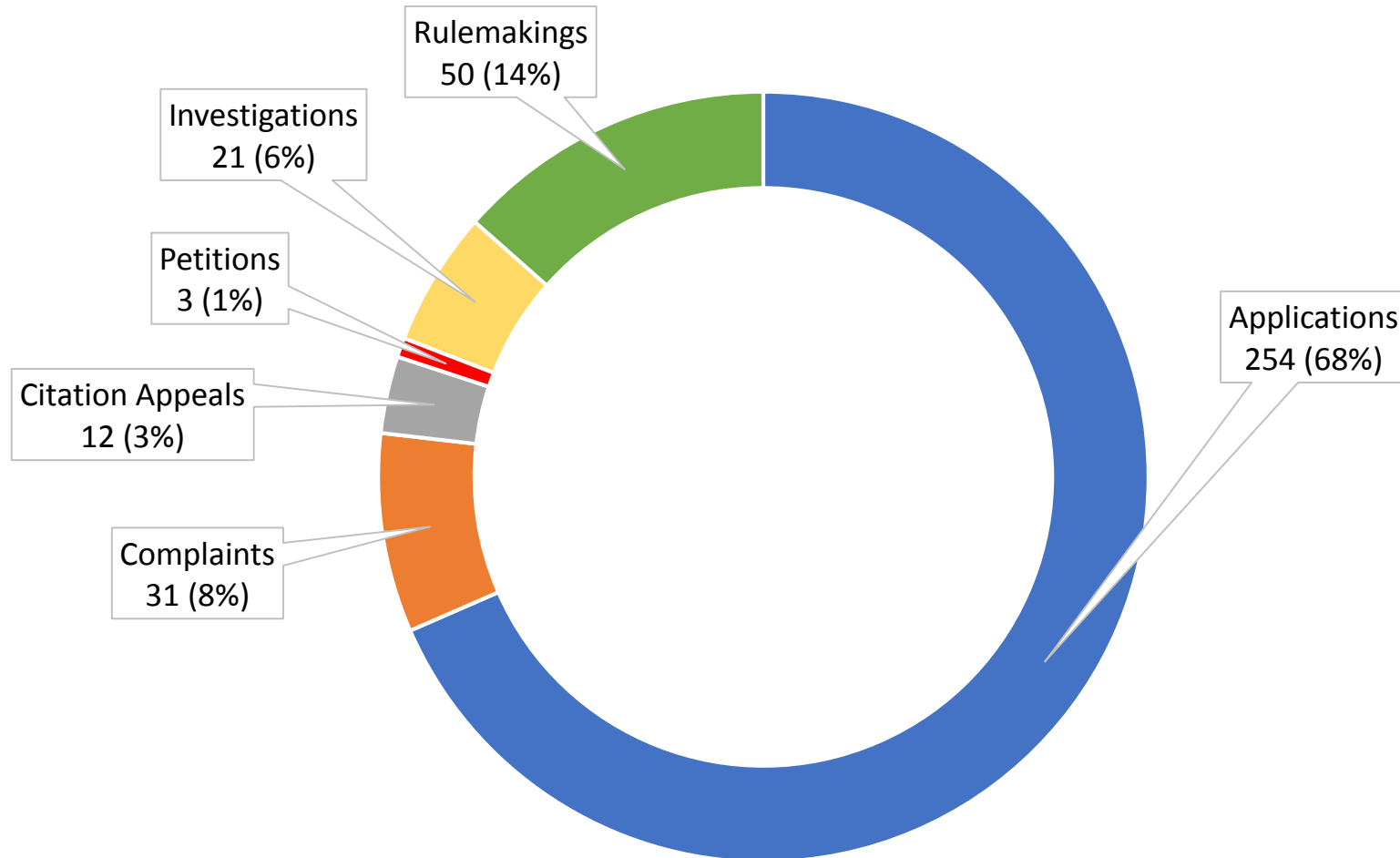


Types of Proceedings

- Applications (A)
- Investigations (I)
- Citation Appeals (K)
- Complaints (C)
- Rulemakings (R)
- Petitions (P)



371 Active Proceedings Breakdown as of March 2019





Context: Applications

Applications (A)

- Wide range of scope and issues; currently 68% of proceedings:
 - Routine CPCN applications by telecommunications companies, railroad crossing applications by transportation companies
 - Unopposed Permit to Construct applications
 - Single utility requests, such as specific procurement requests
 - Large and small general rate cases
- 18-month statutory deadline unless amended by Commission order or amended scoping memo (PU Code § 1701.5(a))



Context: Investigations

Investigations (I)

- Initiated by CPUC's Safety and Enforcement Division or Consumer Protection and Enforcement Division
- OII scope determined by CPUC, incorporates findings from staff investigation
- Highly fact-specific:
 - Can result from single incident or multi-year investigations, such as PG&E 2010 natural gas pipeline explosion in San Bruno, 2013 BART fatalities, PG&E Locate and Mark program
- If investigation categorized as adjudicatory, then 12-month statutory deadline unless extended by Commission order or amended by scoping memo (PU Code § 1701.2(i))



Context: Citation Appeals, Complaints

Citation Appeals (K)

- Often resolved by settlement
- Resolution ALJ-299 Appendix A, Section 18 - sets 60 days to issue draft Resolution following citation appeal

(we note that on February 5, 2019, ALJ Division requested comments on proposed revisions to ALJ-299, as well as other recommended revisions)

Complaints:

- 12-month statutory deadline (PU Code § 1701.2(c))



Context: Rulemakings, Petitions for Rulemaking

Rulemakings (R), currently 14% of proceedings

- Initiated by Commission, often directed by the Legislature with embedded statutory deadlines
- Scope can be narrow, e.g. establish guidance for requests to change time of use periods
- Or expansive, e.g. Integrated Resource Plan
- 18-month statutory deadline unless extended by Commission order or amended scoping memo (PU Code § 1701.5(a))

Petitions for Rulemaking (P)

- Brought by stakeholders, hard to predict timing of filing or scope
- 6-month statutory deadline to grant or deny (PU Code 1708.5)



Tools Already in Practice for Efficient Case Management

- Assigned ALJ and Commissioner control schedule in scoping memo
- ALJ-imposed limits on time for discovery, hearings, briefing
- Workshops deployed to get parties up to speed, avoid discovery issues especially in policy-intensive proceedings
 - E.g., Integrated Resource Plan, Resource Adequacy, Renewables Portfolio Standard, SB 901 wildfire mitigation plans
- E-filing of all applications and briefs required in all docket types
 - Minor exception for certain hard copy filings, e.g. handwritten complaints (Rule 1.13(a)(1))
- Certain days in a week/month devoted to PHCs only
- ALJ training on multiple topics, e.g. controlling the hearing room



Expediting Ideas: Enforcement Actions

Ideas:

- Order Instituting Investigation
 - Include proposed penalty and order early settlement conference
 - Establish Notice of Violation process that includes proposed penalty amount, remedial actions
- Citation programs
 - Goal of enhancing citation programs is to use less formal mechanism than opening OII
 - Make elements consistent where appropriate
 - Expanded citation authority for additional types of violations, such as Integrated Resource Plan filings, wildfire mitigation plan actions
 - See existing citation programs at <http://www.cpuc.ca.gov/enforcement/>



Expediting Ideas: Schedule Certainty, Quick Regulatory Response

- Expedited resolution of matters may be necessary or desirable to meet statutory mandates, address pressing safety or operational issues, or provide greater financial certainty to regulated entities.
- Having a pre-determined schedule can provide certainty and ensures transparency for parties and the CPUC.
- If the Commission were to establish expedited proceeding schedule:
 - What duration should the process be: 6, 9, or 12 months?
 - Should an expedited schedule be reserved for very time-sensitive and high-impact issues, or should this process apply to routine proceedings as an efficiency measure?



Expediting Ideas: Actions Following First 30 Days

Current:

- During initial 30 days, CPUC:
 - Places notice of application in Daily Calendar
 - Categorizes the proceeding (quasi-legislative, ratesetting, adjudicatory) via ALJ resolution
 - Assigns Commissioner
 - Assigns Administrative Law Judge
 - Protest deadline is 30 days after filing

Ideas:

- Set firm/standardized dates for PHC following protest deadline



Expediting Ideas: Prehearing Conferences & Discovery

PHC Ideas:

- Telephonic PHCs for all identifiable routine and uncontested cases
- Impacted by availability of court reporters

Discovery Ideas:

- Identify cases in which pre-filing time period can be used for early discovery
- Firm deadlines for parties to identify discovery disputes



Expediting Ideas: Evidentiary Hearings

Current:

- Parties can stipulate to waiving cross-examination and thus waiving hearings
- Experience indicates that hearings do not always slow proceedings down; can serve as means for parties to understand issues and encourage settlement

Ideas:

- Use scoping memo to articulate hearing approach, such as timeline for stipulation to whether hearings will be held; hold parties to established deadlines
- Set deadline following service of testimony for parties to show that reaching a decision requires hearings; otherwise move to briefs and proposed decision



Expediting Ideas: Motions

- Can Rule 11.1(a) permit combining multiple requests into a single motion?
- Challenge: a single motion can contain 1 simple issue + 1 contentious issue

(Rule 11.1) Motions (excerpt)

(a) A motion is a request for the Commission or the Administrative Law Judge to take *a specific action* related to an open proceeding before the Commission.

(b) A motion may be made at any time during the pendency of a proceeding by any party to the proceeding. A motion may also be made by a person who is not a party if it is accompanied by a motion, pursuant to Rule 1.4, to become a party.

(c) Written motions must be filed and served. The Administrative Law Judge may permit an oral motion to be made during a hearing or conference.

(d) A motion must concisely state the facts and law supporting the motion and the specific relief or ruling requested.



Expediting Ideas: other Case Management

Ideas:

- Use form/template scoping memos and proposed decisions:
 - Unopposed utility Permit to Construct applications
 - Unopposed telecommunications Certificate of Public Convenience and Necessity applications
 - Unopposed applications for authority to construct at-grade or above-grade railroad crossing applications
- Notice of Content of Rulings/Tentative Rulings:
 - Notice of expected outcome of a ruling can allow parties to better prepare and file timely responses
 - Used in CA civil court system (Rule 3.1308 - California Rules of Court)
 - Works in civil courts where judge addressing substance issues tentative ruling for law & motion judge to consider



Questions & Discussion